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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,864	11/17/2000	Brent D. McLaws	MC57-001	8952

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EXAMINER

KIM, CHRISTOPHER S

ART UNIT PAPER NUMBER

3752

DATE MAILED: 08/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/715,864

Applicant(s)

MCLAWS ET AL.

Examiner

Christopher S. Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 3,6-9,11,18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,10,12-17 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species B, b, i in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 3, 6-9, 11, 18 and 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

### ***Specification***

3. The disclosure is objected to because of the following informalities:  
on page 6, line 19, "176" should read --176a--;  
on page 7, line 5, "176" should read --176a--;  
on page 7, line 8, "176" should read --176a--.  
Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:  
  
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 1, 2, 4, 5, 10, 12-17 and 20-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1, 14, 15 and 23 recite "predetermined". The specification fails to disclose the predetermined identifier labels and ultraviolet detectable particles.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 2, 4, 5, 10, 12, 13, 15-17 and 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 15, it is uncertain whether applicant is claiming a combination of a container, identifier labels, discharge aperture, and fluid intake aperture or the subcombination of a container. The specification, on page 6, line 15 through page 8, line 11, clearly defines the container 151, discharge aperture 171, and fluid intake aperture 153 as subcombinations of an applicator 150.

Claim 1 recites the limitation "a plurality of predetermined identifier labels" in line 4. This appears to be a double inclusion of "identifier labels" recited in line 2.

Claim 10 recites the limitation "the cross-sectional area" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the bottom" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 13, it is uncertain whether applicant is claiming a combination of a container, identifier labels, discharge aperture, fluid intake aperture and dynamic fluid conduit or the subcombination of a container.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 4, 5, 10, 13-17, 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Inglis (956,101).

With respect to claims 1, 2, 4, 5, 13-17, 21 and 23, Inglis discloses an identifier label container comprising: a container 1; a plurality of predetermined identifier labels (and base fluid) 2; a discharge aperture 12; a fluid intake 8; a dynamic fluid conduit 9, 21; a container valve 20.

With respect to claim 10, the bottom side is not particularly defined. Therefore, any bottom side having a cross-sectional area less than a cross-sectional area of portions above the bottom in the device of Inglis meets the claimed limitation.

10. Claims 1, 2, 4, 5, 10, 12-17 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by McRitchie (3,236,459).

With respect to claims 1, 2, 4, 5, 13-17 and 21-23, McRitchie discloses an identifier label container comprising: a container 18; a plurality of predetermined

identifier labels (and base fluid) 190; a discharge aperture 130; a fluid intake (connection to tube 40); a dynamic fluid conduit 40, 182; a container valve 42.

With respect to claim 10, the bottom side is not particularly defined. Therefore, any bottom side having a cross-sectional area less than a cross-sectional area of portions above the bottom in the device of McRitchie meets the claimed limitation.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over McRitchie (3,236,459) in view of Healey et al. (5,425,918).

McRitchie discloses the limitations of the claimed invention with the exception of the ultra violet detectable particles. Healey et al. discloses, in column 1, lines 23-24, fluorescent molecules. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have used the device of McRitchie to spray the labels of Healey et al. to spray large areas.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (703)

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308-8336. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703) 308-2087. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7766 for regular communications and (703) 308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
Christopher S. Kim  
Examiner  
Art Unit 3752

CK  
August 12, 2002